IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.12.2005

CORAM:

THE HON'BLE MR.JUSTICE P.SATHASIVAM

and

THE HON'BLE MRS.JUSTICE CHITRA VENKATARAMAN

Writ Petition No.37951 OF 2002

K. Manoharan .. Petitioner

vs.

1. M. Gunasekaran
   Principal
   Government College of Architecture
   and Sculpture
   Mamallapuram, Kancheepuram District.

2. Government of Tamil Nadu rep.
   Secretary to Government
   Tamil Development and Culture
   Fort St. George
   Chennai 600 009.

3. The Commissioner of Arts and
   Culture, Chennai 600 028.

4. The Tamil Nadu Administrative Tribunal
   Chennai 600 104, rep. by its
   Registrar. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified mandamus as stated therein.

For petitioner : Mr. M. Ravi

For respondents : Mr. S. Silambannan for R.1
Mr. E. Sampath Kumar
Government Advocate for R.2&3
..

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ORDER

(ORDER of the Court was made by P.SATHASIVAM,J.)

One K. Manoharan, Instructor (Sudhai Sculpture), Government College of Architecture and Sculpture, Mamallapuram, aggrieved by the order of the Tamil Nadu Administrative Tribunal, Chennai dated 07.05.2002 made in O.A.No.1527 of 1997, has filed the above writ petition to quash the same and for direction, directing respondents 2 and 3 not to regularise the services of the first respondent in the post of Principal, Government College of Architecture and Sculpture, Mamallapuram, Kancheepuram District, but to terminate his services forthwith and consider the candidature of the petitioner for appointment as Principal of the said College.

2. According to the petitioner, he is a Diploma holder in Architecture and Sculpture (Sudhai Sculpture) and also a Post Graduate degree holder in M.A. (History). He rendered more than 20 years of service in the Department and had rich practical experience as Sthapathi for more than 15 years, eligible for being appointed as Principal of the College. He is qualified and eligible for promotion by recruitment by transfer as Principal, as per the Rules fixed by the Government for appointment to the post of Principal in G.O.Ms.No.422 Education Department dated 31.03.1986, since he possesses a Diploma in Architecture and Sculpture as well as practical experience as Sthapathi for more than 10 years as prescribed in the Government Order, besides M.A. Degree in History. However, the first respondent herein, who was working as Lecturer in the Tamil University at Thanjavur was appointed temporarily as Principal under Rule 10(a)(i) of the General Rules for Tamil Nadu State and Subordinate Service in and by G.O.Ms.No.50 Tamil Development and Culture Department dated 08.02.1996. Though the first respondent is not fully qualified for the said post and the petitioner is eligible and qualified for being appointed, the first respondent has been appointed by means of direct recruitment, which is not permissible. Though his appointment is under Rule 10(a)(i) and the same cannot be continued beyond one year period, but his services have been extended; hence, the petitioner preferred O.A.No.1527 of 1997 before the Tamil Nadu Administrative Tribunal for direction to respondents 2 and 3 herein not to extend the appointment of the first respondent as Principal and for promoting him by recruitment by transfer to the said post. The Tribunal, by the impugned order dated 07.05.2002, without considering the relevant Rules, dismissed his application along with another application filed by G. Thirugnanam and G. Perumal . Against the dismissal of his application, viz., O.A.No.1527 of 1997, the petitioner has filed the present writ petition.

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3. Heard Mr. M. Ravi, learned counsel for the petitioner, Mr. S. Silambannan, learned counsel for the first respondent and Mr. E. Sampathkumar, learned Government Advocate for respondents 2 and 3.

4. The only point for consideration in this writ petition is, whether the second respondent is justified in appointing the first respondent herein as Principal of Government College of Architecture and Sculpture, Mamallapurm and whether the Tamil Nadu Administrative Tribunal is right in confirming the same and dismissing O.A.No.1527 of 1997 filed by the petitioner?

5. The Rules governing the appointment to the post of Principal in Government College of Architecture and Sculpture, Mamallapurm as found in G.O.Ms.No.422 Education Department dated 31.03.1986 are as follows.

"

Name of Post	:	Principal
Scale of Pay	:	Rs.1500-60-1800-100-2100
Method of appointment	:	(i) By recruitment by transfer from any other service; or (ii) by direct recruitment.
Age limit	:	45 years (for direct recruitment).

(i) (a) A Bachelor's Degree in Arts, Science and Commerce; and

(b) Practical experience as Sthapathi (Traditional) temple builder and / or Master (Sculpture) for a period of not less than ten years;

OR

(ii) (a) A Diploma in Traditional Sculpture and Architecture; or

(b) i. A Diploma in Architecture and Sculpture; and

ii. Practical experience in Traditional Sculpture and / or Architecture for a period of not less than ten years; or

iii. (a) Minimum General Educational Qualification; and

(b) Practical Experience as Sthapathi (Traditional Temple-builder and/or Master Sculpture) for a period of not less than fifteen years.

Explanation: A Diploma shall mean a Diploma obtained through Tamil Nadu Institute of Architecture and Sculpture, Mamallapuram, or any other qualification recognised as equivalent thereto.

6. It is not in dispute that the above said Rules are in force and applicable to the petitioner as well as the first

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respondent. According to the petitioner, he is fully qualified and eligible for promotion by recruitment by transfer as Principal. On the other hand, it is the case of the Government that in view of the qualification possessed by the first respondent herein, as on the date of appointment, the petitioner was not considered for being appointed as Principal. According to the official respondent, the petitioner was initially appointed on 23.01.1981 as part-time Instructor in Sudhai Section in Government College of Architecture and Sculpture, Mamallapuram on remuneration of Rs.5/- per hour. Subsequently, he was appointed as Instructor under rule 10(a)(1) of the General Rules for the Tamil Nadu State and Subordinate Services from 14.10.1982. His services in the post of Instructor were regularised with effect from 14.10.1985. Since then he has been working as a regular Instructor. All along he has been serving only as Instructor and not as Sthapathy. As an Instructor, the petitioner has been giving training in the field of sudhai sculpture to the students. It is also brought to our notice that there are senior Instructors in the same College, and the petitioner cannot expect promotion overlooking his seniors. We have already referred to the eligibility conditions for being appointed as Principal. It is seen that there is no provision for the promotion of Instructor to the post of Principal in the method of recruitment (or) appointment. It is also demonstrated before us that the question of appointing the petitioner by transfer to the post of Principal of that College does not arise. The Government Order provides appointment by "Recruitment by Transfer" only from any other service. The petitioner cannot also be considered for the post of Principal by the method of promotion, as he has not served in the post which is immediately below the post of Principal, that is Head of Department.

7. The particulars furnished by the first respondent as well as the official respondent show that the first respondent has acquired Bachelor Degree in Temple Architecture and also Master Degree in History and he was awarded fellowship of International Cultural Society of Korea for his research in Buddhist Architecture in South Korea. The first respondent has also worked as Lecturer in the faculty of Temple Architecture and Sculpture in Thanjavur Tamil University. He has undertaken various construction works and temple works and involved himself along with various Sthapathis in the construction of monumental statues.

8. The contention of the petitioner that the first method of appointment to the post of Principal is by way of recruitment by transfer from any other service and if no suitable person is available, then the second method, namely, by direct recruitment, is to be followed is not tenable. As rightly pointed out by the learned counsel for the first respondent and the learned Government Advocate, as per the Government Order, there is no provision for promotion of an Instructor either by the method of

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recruitment or appointment to the post of Principal. Further, as rightly observed by the Tribunal, as per the Rules, discretion is given to the Appointing Authority to choose the method of recruitment by transfer or direct recruitment. There is no indication that the first method should be exhausted before resorting to second method as claimed by the learned counsel for the petitioner.

9. It is the specific stand of respondents 2 and 3 that the first respondent has been appointed by direct recruitment to the post of Principal, Government College of Architecture and Sculpture, Mamallapuram under rule 10(a)(1) of the General Rules for the Tamil Nadu State and Subordinate Services and in accordance with the Rules 3(ii) and 4 of the Rules issued in Government Order (Ms) No.422 Education Department dated 31.03.1986.

10. As discussed earlier, though the petitioner has claimed that he is fully qualified to the post of Principal, Government College of Architecture and Sculpture, Mamallapuram by recruitment by transfer as per the Government Order in force, there is no provision for promotion of an Instructor to the post of Principal either by recruitment or appointment to the post of Principal. As rightly pointed out by the official respondents that he has not served in the post which is immediately below the post of Principal. In other words, the post of Instructor in which the petitioner is working now is not the feeder category for the post of Principal. Only persons placed in the similar status, scale of pay in some other class or category alone can be considered and transferred to the post of Principal by the method of transfer of service. Therefore, the plea of the petitioner in this regard is liable to be rejected.

11. Though the petitioner has claimed that the first respondent is junior to him and his appointment as Principal cannot be sustained, as rightly pointed out, the petitioner has not stated how the first respondent is junior to him. Admittedly, the petitioner as well as the first respondent has not worked anywhere together. In such a circumstance, the question of junior-senior does not arise. According to the Appointing Authority, the first respondent has undertaken various construction works, temple works and involved himself along with various Sthapathis in the construction of monumental statues. It is not in dispute that at the time of appointment the first respondent was working as Lecturer, which is a higher post than the post of Instructor, held by the petitioner. It is also relevant to note that at the appropriate time, the petitioner was working only as Instructor with Diploma qualification whereas the first respondent acquired Bachelor degree in temple architecture; M.A. (History) and he was awarded Fellowship of International Cultural Society of Korea for his research in Buddhist Architecture in South Korea.

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12. It is also relevant to point out that the hierarchy of the posts existing in the Government College of Architecture are:

"(a) Principal
(b) Head of Department
(c)Lecturer
(d) Associate Lecturer
(e) Instructor "

It is also brought to our notice that at the time of appointment of the first respondent, the posts of Lecturer, H.O.D. and Post of Principal were vacant. We have already referred to the qualification, experience and expertise knowledge in sculpture of the first respondent and the position of the petitioner on the relevant date. Further, the Appointing Authority, after considering all the relevant aspects, after finding that the first respondent is a better qualified and experienced candidate than the persons available in the College, appointed him as a Principal.

13. It is also brought to our notice that the Government in G.O.(2D) No.2, Tamil Development Culture and Religious Endowments Department dated 03.01.2003 has regularised the service of the first respondent in the post of Principal with effect from 01.03.1996 by relaxing the Rule 4(b)(i)(b) of the Rules issued in G.O.Ms.No.422 Education Department dated 31.03.1986 with direction that the said regularisation is subject to the outcome of the present writ petition. Though the Tribunal in para 10 of its order has wrongly stated that the Appointing Authority has adopted the first method, the fact remains, on consideration of qualifications, experience in the field of sculpture, appointed the first respondent by direct recruitment. The Tribunal has also analysed the qualification of the petitioner and first respondent with reference to G.O.Ms.No.422 Education Department dated 31.03.1986 and rightly concluded that there is no illegality in the method of appointment resorted to by the Government in the case of the first respondent. We are in entire agreement with the said conclusion.

In the light of what is stated above, there is no error or infirmity or valid ground for interference in the order of the Tribunal. Consequently, the writ petition fails and the same is dismissed. No costs.

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Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To
1. Secretary to Government
   Government of Tamil Nadu
   Tamil Development and Culture
   Fort St. George
   Chennai 600 009.

2. The Commissioner of Arts and
   Culture, Chennai 600 028.

3. The Registrar
   Tamil Nadu Administrative
   Tribunal
   Chennai 600 104.

4. The Principal
Government College of Architecture
   and Sculpture
   Mamallapuram, Kancheepuram District.

1 cc to the Govt. Pleader, Sr. 50056

W.P.No.37951 of 2002

VC (CO)
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